

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Karnette Analyst: Marion Mann DeJong Bill Number: SB 1786
Related Bills: See Legislative History Telephone: 845-6979 Introduced Date: 02/22/2002
Attorney: Patrick Kusiak Sponsor: CA Teachers Association

SUBJECT: Community College Faculty Member or Academic Employee Retention Credit

SUMMARY

This bill would create a credit, similar to the Teacher Retention Credit, for faculty and certain employees of community colleges.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to provide community college teachers with incentives that are comparable to those provided to teachers that teach kindergarten through 12th grade.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would become effective immediately upon enactment. However, the bill specifies that it would apply to taxable years beginning on or after January 1, 2004, and before January 1, 2014.

POSITION

Pending.

Summary of Suggested Amendments

Amendments are needed to resolve the implementation and technical concerns discussed in this analysis. See "Implementation Considerations" and "Technical Considerations" below.

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers that incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they might not otherwise undertake.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Alan Hunter for GHG

04/02/02

Current state law allows a tax credit for credentialed teachers based upon the taxpayer's years of service as a credentialed teacher. The credit amount varies as follows:

<u>Years of Service</u>	<u>Credit</u>
At least 4 but less than 6 years	\$250
At least 6 but less than 11 years	\$500
At least 11 but less than 20 years	\$1,000
20 or more years	\$1,500

The credit cannot exceed 50% of the amount of tax that would be imposed on a teacher's salary, excluding pensions or other deferred compensation, after application of the standard deduction or itemized deductions.

THIS BILL

This bill would create a credit for faculty and academic employees of community colleges based upon their years of service as of a specified date. The credit amount would vary as follows:

<u>Years of Service</u>	<u>Credit</u>
20 or more years, on or before January 1, 2004	\$1,500
At least 11 but less than 20 years, on or before January 1, 2006	\$1,000
At least 6 but less than 11 years, on or before January 1, 2008	\$500

The credit would be limited to 50% of the amount of tax that would be imposed on the faculty member or academic employee's salary, excluding pensions or other deferred compensation, after application of the standard deduction or itemized deductions. Excess credit amounts would not be carried forward.

"Qualifying educational institution" would mean a community college that:

- is located in California,
- files an affidavit pursuant to Sections 33190 and 33191 of the Education Code; and
- provides education for grades 12 to 14, inclusive, or any part thereof.

"Wages and salaries for services as a faculty member or academic employee" would include only amounts received for services performed as a faculty member or academic employee. It would not include pensions or other deferred compensation.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The terms “faculty member,” “academic employee,” “community college,” and “grades 12 to 14” are not defined. Undefined terms can lead to disputes between taxpayers and the department. The author might consider cross-referencing those terms as defined in the Education Code. In addition, the definition of “qualifying educational institution” does not appear to work. The requirement that an affidavit be filed pursuant to referenced sections in the Education Code appear to apply to elementary and high schools and not to community colleges. Further, the terms “community college” and “qualified education institution” seem to be used interchangeably. Using one term consistently would be more appropriate.

The definition of “wages and salaries for services as a faculty member or academic employee” is unclear. It could be interpreted to include amounts earned in another state, or amounts earned as a faculty member of any school (e.g., university, elementary school). Clarification is necessary to ensure that the credit is administered according to the author’s intent.

This bill provides an increased incentive for years of service based on a specified date. It is unclear how this is intended to work and can be interpreted in several ways. First, it could treat taxpayers differently depending on when they achieve the years of service levels that provide the increased credit as shown in the following example.

If Taxpayer 1 qualifies for the credit and has 20 years of service as of January 1, 2004, he could claim a \$1,500 credit for taxable years 2004 to 2013. Taxpayer 2 who has 19 years of service as of January 1, 2004, could claim a \$1,000 credit for taxable year 2004. Under this interpretation, Taxpayer 2 would not be eligible for the additional \$500 (\$1,500 credit) for taxable years 2004 to 2013 when 20 years of service was achieved because he did not have at least 20 years of service as of January 1, 2004. However, Taxpayer 2 could claim the \$1,000 credit for taxable years 2005 to 2013. In addition, taxpayers that achieve four years of service after January 1, 2008, would not be eligible for the credit at all.

Second, it could be interpreted so that Taxpayer 2 in the above example does not receive the credit at all for 2005 to 2013 because that taxpayer would not have 20 years of service on or before 2004 and would not be less than 20 years of service by 2006.

Finally, it could also be interpreted so that if a taxpayer subsequently achieves the service standard, they could get the higher credit amount in the earlier year. For example, if a taxpayer achieves four years of service on December 1, 2007, then they could retroactively get the \$500 credit amount for 2004 to 2007.

TECHNICAL CONSIDERATIONS *

Amendments are provided to resolve the following technical concerns:

- The bill contains three incorrect references to paragraphs in subdivision (c). Amendments 1, 2, and 3 would correct these references.
- The bill specifies a repeal date of January 1, 2014. However, the credit in this bill is for calendar and fiscal years beginning on or before January 1, 2014. In order to retain the provisions “in law” until the day after the last day of the fiscal year beginning December 1, 2013, this date should be December 1, 2014. To correct this repeal date, Amendment 4 is provided.

LEGISLATIVE HISTORY

AB 2879 (Jackson, Stats. 2000, Ch. 75) enacted the teacher retention tax credit. AB 1080 (Villaraigosa, Stats. 2000, Ch. 603) simplified the method of determining tax imposed on a teacher's salary for purposes of the credit limitation contained in the teacher retention tax credit. AB 110 (Zettel, Stats. 2001, Ch. 410) prevents the Franchise Tax Board from imposing the accuracy-related penalty on taxpayers who incorrectly claim the teacher retention credit for the 2000 taxable year.

AB 149 (Zettel 2001/2002) would have extended the teacher retention tax credit to credentialed individuals who provide support services to students (e.g., school psychologists, language specialists, counselors, and school nurses) and to preschool, prekindergarten, and adult education teachers that are credentialed. AB 149 died because it failed to pass to the second house before the constitutional deadline.

OTHER STATES' INFORMATION

Review of *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York* laws found no comparable tax credits or deductions. These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

Based on limited data from the California Community Colleges Chancellor's Office, this bill would result in revenue losses on the order of \$16 million annually starting in fiscal year 2004-05. It is assumed that the intent of this bill is to provide the credit only to classroom teachers rather than administrators and other classified support staff (professional and nonprofessional) as similar to the teacher retention credit. It is also assumed that the credit for each years of service range will go into effect in the same year (2004).

Revenue Discussion

Based on available numbers and salary levels of "tenured/tenure track" and "academic temporary" employees, it is projected that there would be around 25,000 community college teaching personnel potentially qualifying for the credit in 2004. Some are full-time; others are part-time instructors. Distributions of these personnel by tenure class and average salaries/tax liabilities are not available. Projections were derived from existing distributional information for kindergarten to 12th grade teachers with modifications for such things as generally higher community college salaries.

ARGUMENTS/POLICY CONCERNS

Teachers that teach at an elementary or secondary school and also teach at a community college could qualify for both credits.

LEGISLATIVE STAFF CONTACT

Marion Mann DeJong
Franchise Tax Board
845-6979

Brian Putler
Franchise Tax Board
845-6333

Analyst	Marion Mann DeJong
Telephone #	845-6979
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1786
As Introduced February 22, 2002

AMENDMENT 1

On page 2, line 22, strikeout "(2)" and insert:

(1)

AMENDMENT 2

On page 2, line 30, strikeout "(3)" and insert:

(2)

AMENDMENT 3

On page 2, line 33, strikeout "(4)" and insert:

(3)

AMENDMENT 4

On page 3, line 18, strikeout "January" and insert:

December